

ADOT File No.: JPA 05-053  
AG Contract No.: KR05-1155TRN  
Project: Shared Use of FMS and General  
Responsibility for Operations and Maintenance  
of Interchange Traffic Signals  
Section: City of Mesa  
TRACS No.: H578201C  
Budget Source Item No.: N/A

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE CITY OF MESA

**THIS AGREEMENT** is entered into June 30th, 2006 pursuant to Arizona Revised Statutes, § 11-951 through § 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF MESA acting by and through its MAYOR and CITY COUNCIL (the "City").

### I. RECITALS

1. The State is empowered by Arizona Revised Statutes §§ 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
2. The City is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.
3. The State's Freeway Management System, including but not limited to, closed circuit TV cameras, Dynamic Message Signs, ramp meters, vehicles detectors, node buildings, conduit, pull boxes, fiber optic cable and the Traffic Operations Center, enables ADOT to increase highway capacity, manage incidents and provide traveler information. The City's Intelligent Transportation System enables the City to manage traffic and traffic control devices in and around the City, including traffic signals at freeway interchanges.
4. The State agrees to share use of State's Freeway Management System (FMS) with the City to further interconnect and expand the coverage and capability of the City's Intelligent Transportation System (ITS) referred to herein after as the "City's System".
5. In exchange, the City agrees to assume responsibility for the operation and maintenance of current and future traffic signals at freeway interchanges within and adjacent to the City. These current and future planned traffic signals are listed in Exhibit B, attached hereto and made a part hereof.
6. The purpose of this Agreement is to outline each party's responsibilities for the shared use of the State FMS under the Scope of Work.

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NO. 28303  
Filed with the Secretary of State  
Date Filed: 6/30/06  
Janice K. Brewer  
Secretary of State  
By: [Signature]

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

## **II. SCOPE OF WORK**

1. The State shall:

a. Allow the City access, and shared use of one FMS conduit running continuously along the State freeways through and adjacent to the City, for the purpose of installing the City's System to operate traffic signals, communication systems and other ITS devices. Exhibit A details the freeway sections where the City will be allowed use of a FMS conduit.

b. Designate a minimum of two (2) fibers on a fiber optic cable solely for City use, at no cost to the City, on all State installations of FMS within City boundaries. The State may designate additional fiber optic cable and FMS for City use if the State determines such designation is advantageous to the State.

c. Include in the standard design and construction of new freeways, as well as the reconstruction of existing freeways, a minimum of one conduit between the FMS conduit system and all freeway interchange traffic signal controllers.

d. Include in the standard design and construction of new FMS a minimum of three (3) fiber paths in a conduit for shared use of State FMS and City System, and agree the City may use one spare fiber path should they need to replace a fiber break where City fiber is installed in the state FMS system.

e. Provide cable splices where both parties mutually agree as indicated on project plans.

f. Review the design documents required for construction of the City's System and provide comments as appropriate within 20 calendar days of receipt or said design documents shall be deemed approved.

g. Grant an Encroachment Permit for the construction of the City's System ITS components within the State's rights-of-way, through the State's Phoenix Maintenance District Permits Office. Any new construction or installation shall require a separate review and permit, as per the Phoenix Maintenance District's established procedures.

h. Grant the City an "Encroachment Permit" through the State's Phoenix Maintenance District Permits Office for the purpose of maintaining and conducting activities on the City's System such as troubleshooting or repair of cable breaks or splices, etc., and operation and maintenance of current and future traffic signals at freeway interchanges. Said permit will be renewed on an annual basis, as established by the State's Phoenix District Permit Supervisor and the State shall not unreasonably withhold renewal of the annual permit or use the permit renewal process to increase the City's obligations under said permit, unless mutually agreed upon by the City and the State

i. Be responsible for blue staking the State conduit and fiber cable.

j. Be responsible for electric power costs associated with freeway interchange traffic signals for which the City accepts operation and maintenance responsibility in the future, as detailed in Exhibit B.

k. Install or cause to be installed a City standard controller and cabinet assembly, furnished by the City, at locations where Exhibit B states the City will assume operation and maintenance responsibilities "When fiber communications to the City's System is provided either by the City or State and a City standard control cabinet is installed."

l. Should the City relinquish maintenance responsibility for a freeway interchange traffic signal back to the State, furnish and deliver a State standard controller and cabinet assembly to the City within 75 calendar days of the date maintenance responsibility is returned to the State if the State desires the City to replace the City standard controller and cabinet assembly with a State standard controller and cabinet assembly.

2. The City shall:

a. At no cost to the State, install two fiber paths for future use by the State in addition to the City's fiber when the City installs its system where the State has already installed FMS conduit with no provisions for multiple fiber paths in the conduit. Where FMS is already installed in conduit with no provision for multiple fiber paths, these fiber paths will be installed in the center or other available conduit as determined by the State. A different arrangement of fiber paths may be installed as mutually agreed upon by the City and State. As an alternative, the City may install new separate conduit for City's use. In such cases the conduit installed by the City will be for exclusive City use unless otherwise mutually agreed upon by the City and the State.

b. Where there is no existing FMS conduit, the City may install a new conduit for the City's System. In such cases, the City shall install at least three fiber paths in the conduit, with one for City use, one for ADOT use, and one spare. A different arrangement of fiber paths may be installed as mutually agreed by the City and State.

c. Designate two (2) fibers on a City fiber optic cable solely for the State's use, at no cost to the State, on all City installations of fiber within State FMS conduits. Additional ITS devices and fibers may be designated for State use, should the City find such designation is advantageous to the City. The City, at its sole discretion may allow the State use of City fibers at other locations throughout the City should the City find such use advantageous to the City.

d. Provide cable splices where both parties mutually agree as indicated on project plans.

e. In design and construction of the City's System, at no cost to the State, keep the City and the State's fiber optic networks completely separated where practical for maintenance purposes. Where the City is installing the City's System in existing State FMS conduit and pull boxes, it is deemed not practical to completely separate the State's fiber optic network and the City's System.

f. Provide design plans, specifications and other such documents and services required for construction bidding and construction of the City's System to the State for concurrence when sharing use of the State's FMS.

g. Obtain an Encroachment Permit for the City's construction of System ITS components within the State's rights-of-way, through the State's Phoenix Maintenance District Permits Office. Installation shall be on a schedule as determined by the City and approved through the State's Permit process. Agree any new construction or installation shall require a separate permit per the Phoenix District's established procedures, which may be obtained through the District Office referenced herein.

h. Obtain, per established procedures of the State's Phoenix District Permit Office, a valid annual Citywide Encroachment Permit for the routine normal maintenance and emergency maintenance work provided by the City within the State's rights-of-way.

i. Advise the State of plans for each portion of City's System installation and furnish the State any available as-built information for the City's System in both electronic and paper format.

j. Comply with all applicable traffic control requirements and regulations while working in State rights-of-way.

k. Be responsible for all costs associated with installing, operating, and maintaining the City's System unless otherwise specified in this Agreement.

l. Be responsible for blue staking the City System components within the State's rights-of-way.

m. Assume operation and maintenance responsibilities for all current and future freeway interchange traffic signals within and adjacent to the City as shown on Exhibit B.

n. Furnish a City standard controller and cabinet assembly to be installed by the State at locations where Exhibit B states the City will assume operation and maintenance responsibilities "When fiber communications to the City's System is provided either by the City or State and a City standard control cabinet is installed." The City will furnish the controller and cabinet assembly for a location no later than 75 calendar days after fiber communications is provided to a location, unless the City and State mutually agree to other arrangements.

o. Should the City relinquish maintenance responsibility for a freeway interchange signal back to the State, install or cause to be installed a State standard controller and cabinet assembly furnished by the State, if the State delivers said controller and cabinet assembly to the City within 75 calendar days of the date maintenance responsibility is returned to the State. The City shall install or cause said controller and cabinet assembly to be installed no later than 75 calendar days after it is received by the City unless the City and State mutually agree to other arrangements.

3. Both Parties Agree:

a. The State and the City will coordinate with one another when responding to and repairing any damage to either fiber system or facility, which may impact the other's system through shared use of fiber optic cable, pull boxes, innerduct, conduit, or other system components.

b. This agreement only pertains to the general responsibilities for operating and maintaining traffic signals. Specific signal O&M responsibilities are identified in a separate agreement."

#### **IV. MISCELLANEOUS PROVISIONS**

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect however; any provisions as referenced herein for maintenance provided by the City shall be ongoing. This Agreement may be cancelled by either the State or the City upon 180-calendar day written notice to the other party. It is understood and agreed that, in the event the City fails to provide maintenance for the traffic signals and City's ITS system, the State shall in no way be obligated for maintenance of the City's ITS System and traffic signals.

2. This Agreement shall become effective upon filing with the Secretary of State.

3. Upon mutual agreements, the list of freeway segments and list of interchange traffic signals set forth in this Agreement may be added to, or have deletions made, by Letter Addendum with all other conditions set forth remaining in effect.

4. Each party (as "Indemnitor") agrees to indemnify, defend, save and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses including reasonable attorneys' fees, hereinafter collectively referred to as ("claims"), arising out of bodily injury of any person, including death or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the Indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees or volunteers.

5. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

6. The provisions of Arizona Revised Statutes § 35-214 are applicable to this contract.

7. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

8. Non-Availability of Funds. Every payment obligation of the State and the City under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State or the City at the end of the period for which the funds are available. No liability shall accrue to the State or the City in the event this provision is exercised, and the State or the City shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

9. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

10. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 S. 17th Avenue Mail Drop 616E  
Phoenix, AZ 85007  
FAX: (602) 712 7424

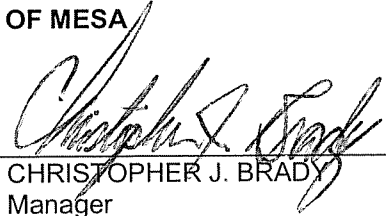
City of Mesa  
City Manager  
P. O. Box 1466  
Mesa, AZ 85211-1466

11. Pursuant to Arizona revised Statutes § 11-952, (D), attached hereto and incorporated herein, is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

**CITY OF MESA**

By

  
CHRISTOPHER J. BRADY  
Manager

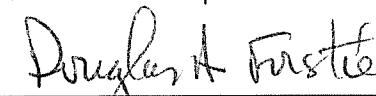
Date

5/26/06

**STATE OF ARIZONA**

Department of Transportation

By


  
DOUGLAS A. FORSTIE, P.E.  
Deputy State Engineer, Operations

Date

06-16-06

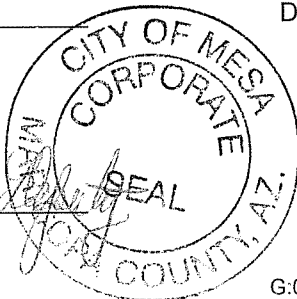
**ATTEST**

By

  
BARBARA JONES  
City Clerk

Date

5/31/06



G:05-053-FMS & ITS between ADOT & Mesa  
Final Revisions by Mesa 1-23-06  
Agreed by ADOT & Mesa 2-3-06

## EXHIBIT A

### Freeway Sections Where the State Will Allow the City to Use FMS Conduit

Freeway	From	To
SR 101L Price Freeway	SR 202L Red Mountain Freeway	Western Canal
SR 202L Red Mountain Freeway	SR 101L Price Freeway	US 60 Superstition Freeway
SR 202L Santan Freeway	US 60	S. Power Road
US 60 Superstition Freeway	101L Price	Meridian Road

**EXHIBIT B**  
**Freeway Interchange Traffic Signals to be Operated and Maintained by the City**

<b>202L, RED MOUNTAIN AND SANTAN FREEWAYS</b>		
<b>Cross Street</b>	<b>Date City To Assume Operation &amp; Maintenance Responsibility</b>	<b>Agency Responsible For Electric Power Cost</b>
Dobson Road	When fiber communications to the City's System is provided either by the City or State and a City standard control cabinet is installed.	State
Alma School Road	When fiber communications to the City's System is provided either by the City or State and a City standard control cabinet is installed.	State
W. McKellips Road	When fiber communications to the City's System is provided either by the City or State and a City standard control cabinet is installed.	State
Country Club Drive	When fiber communications to the City's System is provided either by the City or State and a City standard control cabinet is installed.	State
Gilbert Road <sup>1</sup>	Currently operated & maintained by City	City
W. McDowell Road <sup>1</sup>	Currently operated & maintained by City	City
Val Vista Drive <sup>1</sup>	Currently operated & maintained by City	State
Greenfield Road <sup>1</sup>	Currently operated & maintained by City	State
Higley Road <sup>1</sup>	Currently operated & maintained by City	State
Recker Road <sup>1</sup>	Currently operated & maintained by City	State
N. Power Road <sup>1</sup>	Currently operated & maintained by City	State
E. McDowell Road	Upon construction and activation of the traffic signal	State
University Drive	Upon construction and activation of the traffic signal	State
Main Street/Apache Trail	Upon annexation of this section of Main Street/Apache Trail into the City, and a City standard control cabinet is installed.	State
Broadway Road	Upon construction and activation of the traffic signal	State
Baseline Road	Upon construction and activation of the traffic signal	State
Guadalupe Road	Upon construction and activation of the traffic signal	State
Elliot Road	Upon construction and activation of the traffic signal	State
Warner Road	Upon construction and activation of the traffic signal	State
Hawes Road	Upon construction and activation of the traffic signal	State
Sossaman Road	Upon construction and activation of the traffic signal	State
S. Power Road	Upon annexation into the City, and a City standard control cabinet is installed.	State

## EXHIBIT B

### Freeway Interchange Traffic Signals to be Operated and Maintained by the City (Continued)

US 60, SUPERSTITION FREEWAY		
Cross Street	Date City to Assume Operation & Maintenance Responsibility	Agency Responsible for Electric Power Cost
Dobson Road <sup>1</sup>	Currently operated & maintained by City	City
Alma School Road <sup>1</sup>	Currently operated & maintained by City	City
Country Club Drive <sup>1</sup>	Currently operated & maintained by City	City
Mesa Drive <sup>1</sup>	Currently operated & maintained by City	City
Stapley Drive <sup>1</sup>	Currently operated & maintained by City	City
Gilbert Road <sup>1</sup>	Currently operated & maintained by City	City
Val Vista Drive <sup>1</sup>	Currently operated & maintained by City	City
Greenfield Road <sup>1</sup>	Currently operated & maintained by City	City
Higley Road <sup>1</sup>	Currently operated & maintained by City	City
Superstition Springs Blvd. <sup>1</sup>	Currently operated & maintained by City	City
Power Road <sup>1</sup>	Currently operated & maintained by City	City
Sossaman Road	Currently operated & maintained by City	State
Ellsworth Road	When fiber communications to the City's System is provided either by the City or State and a City standard control cabinet is installed.	State
Crismon Road	When fiber communications to the City's System is provided either by the City or State and a City standard control cabinet is installed.	State
Signal Butte Road	When fiber communications to the City's System is provided either by the City or State and a City standard control cabinet is installed.	State

<sup>1</sup>Pursuant to existing agreement.



JPA 05-053

APPROVAL OF THE CITY OF MESA ATTORNEY

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF MESA, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the CITY under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 25<sup>th</sup> day of May, 2006.

A handwritten signature in cursive script, appearing to read "Debbie Spurr", written over a horizontal line.

City Attorney

RESOLUTION NO. 8716

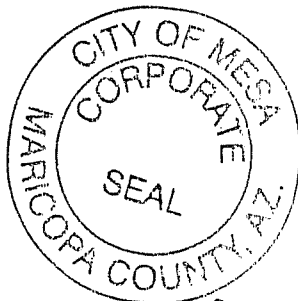
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT BETWEEN THE STATE OF ARIZONA DEPARTMENT OF TRANSPORTATION AND THE CITY OF MESA FOR THE SHARED USE OF FMS AND GENERAL RESPONSIBILITY FOR OPERATION AND MAINTENANCE OF INTERCHANGE TRAFFIC SIGNALS

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, AS FOLLOWS:

Section 1: That the cost sharing agreement between the State of Arizona Department of Transportation and the City of Mesa for the shared use of the Freeway Management System (FMS) and general responsibility for operation and maintenance of interchange traffic signals (ADOT JPA No. 05-053); is hereby approved.

Section 2: That the City Manager, Christopher J. Brady, or his designated representative, is authorized and directed to execute the agreement on behalf of the City of Mesa, and the City Clerk is authorized and directed to attest to the signature of the City Manager or his authorized designated representative thereon.

PASSED AND ADOPTED by the City Council of the City of Mesa, Maricopa County, Arizona, this 22<sup>nd</sup> day of May, 2006.




APPROVED:

Reno Hawker  
Mayor

ATTEST:

Linda Crocker, Deputy  
City Clerk

<p>TERRY GODDARD Attorney General</p>	<p> <b>OFFICE OF THE ATTORNEY GENERAL</b> STATE OF ARIZONA</p>	<p>CIVIL DIVISION TRANSPORTATION SECTION Writer's Direct Line: 602.542.8855 Facsimile: 602.542.3646 E-mail: Susan Davis@azag.gov</p>
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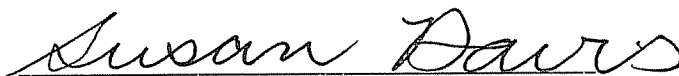
**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR05-1155TRN (**JPA 05-053**), an Agreement between public agencies, i.e., The State of Arizona and The City of Mesa, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: June 19, 2006

TERRY GODDARD  
Attorney General



SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section

SED:mjf:965904  
Attachment